IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO. 174 OF2003

IN

SUMMARY SUIT NO. 3286 OF 2002

Consociated Engineers
Pvt. Ltd. ..Plaintiffs

versus

India Medtronics P. Ltd. ..Defendants

Mr. R. S. Tripathi i/b. Mahendra Gupta for the Plaintiffs.

None for the Defendants.

CORAM : D. G. DESHPANDE,J.

DATE : 29TH SEPTEMBER,2004.

P.C. :

1. Heard Counsel for the Plaintiffs. Nobody is present for the Defendants. Perused affidavit in reply to the Summons for Judgment. The defendants have not taken over the affairs of Midas Rex Pneumatic Tools, INC. The plaintiffs used to have dealing with the defendants and used to submit their commission bills directly to the Defendants. The plaintiffs used to supply products of Midas to his customers but later on the defendants started giving quotations to the plaintiffs' customers at a lower rate. According to the plaintiffs they were

receiving their commission in US Dollars on submission of their commission bills. It is in this background that the suit is filed against the defendants. Plaintiffs notice is at Exhibit 'F' to the plaint. Counsel for the plaintiffs admits that as stated in paragraphs 6(a) and (b), the plaintiffs have received US Dollars 7,736.12 from the defendants but the amount of US Dollars 2,115.50 is still due and payable. However, according to the defendants commission was payable not by them but by their principals in United States, upon whom the liability to pay commission lies, is a disputed question of facts for which evidence will have to be recorded. Therefore, unconditional leave to defend the suit is granted to the Defendants. Summons for Judgment disposed of.

2. Plaintiffs are permitted to sell their literature and demonstration kits and give the account by way of affidavit and appropriate the amount thereafter.

3. Suit be transferred to the list of Commercial Causes. Written statement or points of defence to be filed within a period of eight weeks from today and Affidavit of documents or list of documents to be filed within two weeks thereafter. Discovery or inspection of documents within two weeks thereafter. Suit to be placed on regular board for hearing

thereafter.

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